



Genova Burns LLC
494 Broad Street, Newark, NJ 07102
Tel: 973.533.0777 Fax: 973.533.1112
Web: www.genovaburns.com

Kathleen Barnett Einhorn, Esq.
Partner
Member of NJ and NY Bars
keinhorn@genovaburns.com
Direct: 973-535-7115

December 23, 2014

VIA ECF

The Honorable Michael A. Hammer, U.S.M.J.
United States District Court
District of New Jersey
Martin Luther King Building and U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101

Re: Lisa Fisher v. Hon. Francine A. Schott, et al.
Civil Action No. 13-cv-5549 (MAH)(ES)

Dear Judge Hammer:

This firm represents defendant, Honorable Francine A. Schott, J.S.C., ("Judge Schott") in the above-captioned matter filed by Plaintiff, Lisa Fisher ("Plaintiff") (collectively, "the parties"). As you are aware, on Friday, December 5, 2014, counsel for the parties appeared before your Honor to discuss several outstanding discovery issues, set forth in our November 13, 2014 letter to Your Honor and Mr. Dwyer's letter dated December 4, 2014. At the conference, Your Honor made several rulings on the record with regard to the parties' upcoming discovery obligations. On December 8, 2014, Your Honor thereafter issued an Order memorializing the Court's rulings. However, it has come to my attention that the contents of Your Honor's Order do not fully comport with Your Honor's rulings. On December 11, 2014, I provided a list of proposed modifications to Plaintiff's counsel in the hopes of submitting a Consent Order Amending the December 8, 2014 Order and/or resolving the outstanding issues. Despite these efforts we have been unable to resolve all issues regarding the order.

In light of the foregoing, Judge Schott seeks Your Honor's assistance in this matter, and respectfully requests the following modifications be made to Your Honor's December 8, 2014 Order:

1. In Paragraph 3b, Plaintiff was instructed to identify, in writing, what steps, if any, have been taken to obtain Plaintiff's deleted data from her cellular phone. In addition, Plaintiff was instructed to identify an expert to examine data from Plaintiff's cellular phone, including any deleted text messages;



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2. In Paragraph 3c, Plaintiff was instructed on December 5, 2014 to provide an additional release for the State of New Jersey to release disability documents from 2008 to **Present**;
3. In Paragraph 3e, Judge Schott was **not** instructed to provide a more detailed response to plaintiff's request for information about any alleged work performance deficiencies by December 12, 2014. Counsel is however prepared to produce this information immediately upon receipt of the discovery ordered by Plaintiff to be produced by December 12, 2014. (Emphasis added to reflect insertion).

Additionally, Your Honor ordered certain discovery be produced by Plaintiff no later than December 12, 2014. Plaintiff failed to produce all of this discovery by December 12, 2014 and despite several representations from Plaintiff's counsel that the discovery would be produced last week, we have not, to date, received the following discovery:

1. HIPAA Release to Walmart for the period of November 2012 to the Present;
2. HIPAA Release to the State of New Jersey for the period of January 1, 2008 to Present to Release the Plaintiff's disability leave documents filed with the State;
3. Identification of an expert and the steps taken by the expert to examine plaintiff's cell phone and retrieve deleted text messages.

As such, we request an order compelling the production of the outstanding discovery listed herein and the entry of sanctions against Plaintiff for failing to abide by the Court's order.

We thank Your Honor for your time and consideration in this matter. Should the Court require anything further, please do not hesitate to contact me directly.

Respectfully Submitted,

GENOVA BURNS LLC

s/Kathleen Barnett Einhorn

KATHLEEN BARNETT EINHORN

KBE/cr

c: Andrew Dwyer, Esq. (via ECF)
Susan M. Scott, Esq., Deputy Attorney General (via ECF)
Angelo J. Genova, Esq. (via ECF)